

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

CRP.No. 2000 of 1999(A)

(*LB.85/1973 of TALUK LAND BOARD, PALAKKAD*)

REVN. PETITIONERS/DECLARANTS:

1. C. SAHADEVAN, S/O. CHAMIYAR.
2. SULOCHANA, W/O. C. SAHADEVAN.

(BOTH ARE RESIDING AT KODUMBA KALAM, CHADYAN KALAI,
PUDUSSERY WEST, PALAKKAD)

BY ADV. SRI.V.CHITAMBARESH
ADV. SRI.S.KRISHNA PRASAD

RESPONDENTS/RESPONDENTS/PETITIONER:

1. THE STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM.
2. THE TALUK LAND BOARD, PALAKKAD REPRESENTED BY ITS CHAIRMAN.
3. THE TAHSILDAR, PALAKKAD TALUK.
- **4. A. JABASTHIAR, S/O. ANTHONY MUTHU MANIAKKARAN RESIDING AT CHADAYAN KALAI, PUDUSSERY WEST, PALAKKAD.

** **SUPPLEMENTAL RESPONDENTS 5 TO 7:**

5. BHAGYA LEELA MARY, WIDOW OF A. JABASTHIAR.
6. MAHIMARAJAN @ RAJAN, S/O. LATE A. JABASTHIAR.
7. ANTHONYMUTHU @ SELVAN, S/O. LATE A. JABASTHIAR.

CRP.No. 2000 of 1999(A)

(SUPPLEMENTAL RESPONDENTS 5 TO 7 ARE RESIDING AT
PALAYATH HOUSE, CHEDAYANKALAI, PUDUSSERY WEST,
KANJIKODE, PALAKKAD.)

(SUPPLEMENTAL RESPONDENT NOS. 5 TO 7 ARE IMPEADED AS
LEGAL HEIRS OF THE DECEASED 4TH RESPONDENT VIDE ORDER
DATED 05.10.2007 IN I.A.NO. 2951 OF 2006)**

R1 TO R3 BY GOVERNMENT PLEADER ADV. SHRI JOHN AMBOOKEN
R4 BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
BY ADV. SRI.S.SUJIN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 07/12/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

CRP.No. 2000 of 1999(A)

ORDER ON C.M.P.NO. 4151 OF 1999 IN C.R.P.NO. 2000 OF 1999

DISMISSED.

07.12.2007

SD/- K.T. SANKARAN, JUDGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

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C.R.P. No. 2000 OF 1999
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Dated this the 7th December, 2007

ORDER

Proceedings were initiated against the revision petitioners for determination of the ceiling area in respect of the lands held by them, in L.B. 85 of 1973 on the file of the Taluk Land Board, Palakkad. By final order dated 18.01.1984, the Taluk Land Board held that the declarant is liable to surrender an extent of 11 acres and 4.5 cents of land as excess land. Possession of an extent of 6 acres and 41.5 cents was assumed from the declarant. The balance extent to be surrendered by him was 4.63 acres. The Taluk Land Board directed the petitioner/declarant to surrender an extent of 50 cents in Sy.No. 487/4 and 4.13 acres in Sy.No. 487/2, the total extent being 4.63 acres. The 4th respondent filed a claim petition under section 85(8) of the Kerala Land Reforms Act claiming that he has tenancy right in respect of 50 cents of land in Sy.No. 487/4. The claimant contended that the declarant is not in the possession of the aforesaid extent of 50 cents and that the declarant has no right, title and interest over the said item of land as on 01.01.1970.

2. The Taluk Land Board did not decide as to whether the claimant under section 85 (8) of the Act has established any tenancy right. It was also not verified by deputing an authorised officer as to whether the declarant was in actual possession of the said extent of land as on 01.01.1970. Instead, the Taluk Land Board, by the present impugned order, made a short cut and directed the declarant to surrender the same extent of 4.63 acres in Sy.No.487/2 alone. The extent of 50 cents claimed by the claimant was taken out of the items of lands to be surrendered but the said

extent was not deleted from the ceiling account of the declarant.

3. The method adopted by the Taluk Land Board in disposing of the case, after entertaining an application under section 85(8) of the Land Reforms Act is not a legal and proper method. Once a claim put forward by the claimant is accepted, the said extent of land so proved to be held by the claimant shall be excluded from the account of the declarant. If it is so excluded, necessarily, the total extent of land held by the declarant would be less by the said extent of land which is allowed in favour of the claimant. In such a case, the declarant does not stand to lose since the extent claimed by the claimant and upheld by the Taluk Land Board will go out of the purview of the total extent held by the declarant. Necessarily, after fixing the ceiling area applicable to the declarant, there will be consequent reduction in the extent to be surrendered by him. In the case on hand, if the claim made by the claimant is to be accepted, the declarant need surrender only an extent of 4.13 acres instead of 4.63 acres. The Taluk Land Board, though granted the benefit of excluding the land claimed by the claimant out of the items of lands to be surrendered as excess land, did not exclude that extent of land from the total extent held by the declarant. Instead, the Taluk Land Board directed that the extent of 50 cents should be taken from another survey number belonging to the declarant. The necessary consequence of a claim being allowed is corresponding reduction in the total extent from the account of the declarant. Instead of doing so, an easy method was adopted by the Taluk Land Board, so that the claimant would not have any grievances, but the declarant alone would be put to prejudice. When a claim is allowed under section 85(8) of the Act, the declarant would not be entitled to opt to surrender that land under Section 85(6) of the

Act nor such option could be accepted by the Taluk Land Board . In case a claim under Section 85 (8) is allowed in respect of a land, it would preclude the Taluk Land Board from accepting the option exercised by the declarant in respect of that land. An option can be rejected by the Taluk Land Board in any of the following three contingencies mentioned in sub-section (6) of Section 85 of the Act, viz.:

(i) The Taluk Land Board has reason to believe that the person whose land is indicated to be surrendered has no good title to that land; or

(ii) the land indicated to be surrendered is not accessible ; or

(iii) the Taluk Land Board considers for any other reason to be recorded in writing that it is not practicable to accept the choice .

4. The second proviso to sub-section (6) of Section 85 states that where in determining the identity of land to be surrendered , the interest of other persons are also likely to be affected, the Taluk Land Board shall except in cases where all the persons interested have agreed to the choice indicated , afford an opportunity to such other persons to be heard and pass suitable orders regarding the land to be surrendered. A person whose interest is likely to be affected includes a person whose claim could be accepted under section 85(8). Once his claim is accepted, he need not again appear before the Taluk Land Board to answer the exercise of option by the declarant. In other words, once a claim is allowed under section 85(8) of the Act, it goes out of purview of exercise of option by the declarant under section 85(6) of the Act. All these provisions would clearly indicate that the Taluk Land Board cannot simply accept the claim of a claimant and at the same time include that land in the total extent of land held by the declarant.

5. The order passed by the Taluk Land Board is illegal and unsustainable and it is liable to be set aside. Accordingly, the order passed by the Taluk Land Board is set aside. The Taluk Land Board shall dispose of the matter afresh in accordance with law and in the manner indicated above. No order as to costs.

**K.T. SANKARAN,
JUDGE.**

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C.R.P. No. 2000 OF 1999

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K.T. SANKARAN, J.

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C.R.P. No. 2000 OF 1999

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Dated this the 7th December, 2007

ORDER